

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
ACQA No. 45 of 2013

Smt. Sunita Devi Purena W/o. Shri Devendra Kumar Purena, Aged about 32 years, Caste-Satnami, Occupation- Daily wages Employee in District Tradition Museum, Jagdalpur, R/o. Village Madwa, Police Station Bilaigarh, District Baloda Bazar (C.G.) At present R/o. District Tradition Museum, Jagdalpur Near Sirhasar Chowk, Parilkot Bada, Civil and Revenue District Bastar (C.G.)

---- Appellant

Versus

1. Amrit Lal Paikara, S/o. Shri Umendra Singh Paikara, Aged about 49 years, Occupation Curetor (Superintendent) of District Tradition Museum Jagdalpur, R/o. Village Banjari, P.S. Urga, District Korba (C.G.), At present R/o. Bodhghat Houseing Board Colony, Q.NO. MIG-20, Jagdalpur Civil and Revenue District Bastar (C.G.)

2. State of Chhattisgarh Through The Station House Officer, Police Station Bodhghat, District Baster (C.G.)

----Respondents

AND

ACQA No. 156 of 2017

State of Chhattisgarh, Through Police Station Bodhghat, District Bastar, Jagdalpur (C.G.)

---- Appellant

Versus

Amrit Lal Paikara, S/o. Umendra Singh Paikara, Aged about 49 years, Suspended Government Employee, presently R/o. Bodhghat Colony, Jagdalpur, Permanent address village Bajari, Post Komari, P.S. Uranga, District Korba (C.G.)

----Respondent

For Appellant/State :- Mr. Satish Gupta, Govt. Advocate

For Respondent :- Mr. Dinesh Tiwari, Advocate.

Hon'ble Shri Prashant Kumar Mishra,

Hon'ble Shri Ram Prasanna Sharma, JJ

Oral Judgment

Per Ram Prasanna Sharma, J

08.02.2018

1. Since both the appeals arise out of common judgment they are heard analogously and are being disposed of by this common judgment. The impugned judgment of acquittal dated 19-03-2013 has been passed by the Second Additional Sessions judge(Ear Mark Court) Bastar at Jagdalpur, Session Division Bastar, in Session Trial No. 75 of 2012, wherein the said Court has acquitted the respondent for commission of offence punishable under Sections 376(B) and 506 (2) of the IPC 1860 for having committed sexual intercourse taking advantage of his official position and induced the prosecutrix for the said act and for threatening her to kill.
2. As per the prosecution case, the respondent was posted as Curator/In-charge of Archaeological Department, Jagdalpur where the prosecutrix was working as daily wage employee. Respondent was residing alone at Bodhghat Colony. He used to call the prosecutrix and her husband who were daily wages employees in the said department and after sending the husband for bringing vegetable, he used to sexually exploit the prosecutrix. The matter was reported to police. After completion of investigation, charge sheet was filed against the respondent. Respondent pleaded

innocence and therefore, the trial was conducted. After examination of all the witnesses, statement of the respondent was recorded under Section 313 of the CrPC. After hearing the parties, the trial Court acquitted the respondent as aforementioned.

3. Learned counsel for the State submits as under;-

(I) That as per evidence adduced by the prosecution it is established that the respondent was in-charge of office where the prosecutrix and her husband were working as daily wage employees and the respondent taking advantage of his official position induced the prosecutrix to have sexual intercourse with him and threatened to kill her.

(ii) That the trial Court has not appreciated the material available on record in its proper perspective and came to a wrong conclusion.

(iii) That the finding arrived at by the trial Court is an error of fact as well as error of law and same is liable to be set aside.

4. On the other hand, learned counsel for the respondent submits that the finding arrived at by the trial Court is based on proper marshaling of the evidence adduced by the prosecution and same is not liable to be disturbed or modified while invoking jurisdiction of the appeal.

5. We have heard learned counsel for both the parties and perused the record of the trial Court.

6. In a case of sexual assault evidence of prosecutrix must be of sterling quality because such act is done in place of secrecy and

prosecutrix would be the sole witness of the incident. In the present case the prosecutrix is a married lady aged about 31 years. She lodged the report against the respondent on 18.05.2012 as per Ex.P-19. As per her version the respondent made physical relation with her since the month of January 2012 and repeated the same till April 2012. From her statement it is clear that she made relation with the respondent for a long time during four months but did not inform even to her husband who accompanied her daily to the house of respondent. She did not inform the incident to anyone for four months and not made any complaint against the respondent to higher authorities. As per version of this witness she did not disclose the act of the respondent because she was threatened to kill.

7. Now, the point for consideration is whether the explanation given by this witness is acceptable. From her statement it is clear that she never visited the house of the respondent alone and she was always in the company of her husband. If anything happens against her, there is nothing to prevent her informing about the incident to her husband because her husband was always available with her. After the first incident she had option to stop to go to the house of respondent but she chooses to go frequently in the house of respondent and maintain relation with him for four months. Not complaining to anyone for four months and opting to continue with relation shows that her act was consensual. It is difficult to hold that the respondent taking advantage of his official position induced to maintain physical relation for long time.

8. It is settled law that there is long mental distance between “ may be true and must be true”. The prosecution is under obligation to prove its' case in the category of “must be true”. It is also settled position that graver the offence stricter the proof. One cannot be convicted on the basis of shaky evidence. The case of the prosecution is solely based on the statement of prosecutrix but her evidence is not found to be of such quality beyond shadow of doubt.
9. Respondent is also charged for offence punishable under Section 506 (II) of the IPC. For commission of offence under Section 506(II) of the IPC, only uttering some words is not sufficient which had only sound and fury but it must convey well formed determination to carry threat into execution. When there is shaky version of the prosecutrix, the trial Court rightly found that it is not safe to convict for offence under Section 506(II) of the IPC.
10. On overall assessment of evidence, we are of the view that the finding arrived at by the trial Court is not perverse. It can not be said that the trial Court has considered irrelevant and extraneous material placed before it and it would not be permissible for us to reverse the finding of acquittal.
11. For the foregoing, the acquittal appeals fail and are hereby dismissed.

Sd/-

Judge
(Prashant Kumar Mishra)

Sd/-

Judge
(Ram Prasanna Sharma)